

**TESTIMONY OF STEVEN J. COLE**  
**PRESIDENT AND CHIEF EXECUTIVE OFFICER**  
**COUNCIL OF BETTER BUSINESS BUREAUS, INC.**

Before the

**U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY**  
**AND COMMERCE**  
SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER  
PROTECTION.  
"RIGHT TO REPAIR: INDUSTRY DISCUSSIONS AND LEGISLATIVE OPTIONS"  
WASHINGTON, D.C.

THURSDAY, NOVEMBER 10, 2005

Summary, Testimony of Steven J. Cole, Council of Better Business Bureaus, Inc., 11/10/05:

The Council of Better Business Bureaus, Inc. (CBBB) has significant experience with the automotive industry in the United States, providing BBB reports and dispute resolution services to literally millions of American consumers and businesses each year. The CBBB is also recognized as a leader in providing self-regulatory programs that work.

CBBB was asked to serve as a facilitator to provide assistance to various parts of the automotive industry in designing a specialized, third-party dispute resolution mechanism to resolve issues concerning the provision by auto manufacturers of diagnostic, repair and service information to vehicle owners and repair facilities. The parties to that facilitation included the Alliance of Automobile Manufacturers (AAM), the Coalition for Auto Repair Equality (CARE), the Automotive Aftermarket Industry Association (AAIA), the Association of International Automobile Manufacturers (AIAM), the National Automobile Dealers Association (NADA) and the Automotive Service Association (ASA). Members of the staff of the Federal Trade Commission observed each facilitation session.

The group held 10 facilitation sessions between August 3<sup>rd</sup> and September 30<sup>th</sup>. CBBB provided progress reports to the Federal Trade Commission on September 1<sup>st</sup>, September 14<sup>th</sup> and October 3<sup>rd</sup>.

The parties participated in the facilitation in good faith; however, they were ultimately unable to reach an agreement on the full scope of issues they considered.

While the parties reached general agreement on a third-party dispute resolution process, they recognized that a third-party dispute resolution process by itself would not provide an adequate solution unless improvement was made in the two steps that would necessarily precede a formal third party process. Accordingly, the group spent much of its time focused on how vehicle manufacturers would respond to initial requests for assistance from repair facilities and how an expedited "fact-finding" would be conducted through a restructured and better-funded process through the National Automotive Service Task Force (NASTF).

The following issues were not resolved: 1) How should NASTF be restructured and governed; 2) How should tool-related issues be handled, both by NASTF and by the third-party mechanism; 3) How or whether possible issues of the cost of a tool would be handled by NASTF and the third-party; 4) How should issues relating to vehicle security be handled; 5) The extent to which manufacturer supplied information through telephone hotlines should be required to be made available to independent repair facilities; and 6) Should there be monetary remedies in the third party dispute resolution process, and if so, how would they be calculated, and what penalty, if any, should be assessed for non-compliance.

Testimony of Steven J. Cole, Council of Better Business Bureaus, Inc., 11/10/05:

Mr. Chairman and members of the Sub-Committee, my name is Steven J. Cole, and I am the President and Chief Executive Officer of the Council of Better Business Bureaus, Inc.

The Council of Better Business Bureaus (CBBB) is the umbrella organization for the nation's Better Business Bureau system, which consists of 177 local BBB's and branches and 375,000 member businesses across the United States and Canada. The CBBB is a nonprofit business membership organization tax exempt under section 501(c)(6) of the Internal Revenue Code. More than 275 leading edge companies nationwide belong to the CBBB and provide support for its mission of promoting ethical business practices through voluntary self-regulation and consumer and business education.

In 2004, the Better Business Bureau system provided nearly sixty million instances of services – reliability reports, complaint processing, educational information and referrals. The CBBB has significant experience with – and tailored programs serving – the automotive industry. Thousands of auto dealers and independent repair facilities are members of local Better Business Bureaus across the United States, and as such meet BBB standards for ethical business practices and advertising. During 2004, nearly 2.4 million consumers contacted the BBB on the Internet or by telephone to obtain BBB reports on auto-related products and services from members and non-members alike. At the same time, the BBB system handled more than 72,000 individual consumer complaints involving the automotive industry. In addition, the CBBB provides warranty dispute

resolution services for more than 30 auto manufacturer brands, serving an additional 28,000 consumers with conciliation, mediation and arbitration services.

In July of this year, I was asked by the Federal Trade Commission, with the support of representatives of both the auto manufacturers and the auto repair industry, to serve as a facilitator in an effort to assist the various groups in designing a third-party dispute resolution process to resolve issues concerning the provision by auto manufacturers of diagnostic, repair and service information to vehicle owners and repair facilities.

The process was tasked with very challenging time constraints. It was expected that the CBBB would make a report to the Federal Trade Commission not later than September 1<sup>st</sup> on the outcome of the facilitation effort.

At the beginning of the process, the original parties – the Alliance of Automobile Manufacturers (AAM) and the Coalition for Auto Repair Equality (CARE) – agreed to a set of ground rules for the facilitation and further agreed to grant the facilitator the authority to make decisions regarding participation in the process and other procedural issues. One early decision I made was to allow additional groups to be represented as named parties in the facilitation. Those groups were: the Automotive Aftermarket Industry Association (AAIA), the Association of International Automobile Manufacturers (AIAM), the National Automobile Dealers Association (NADA) and the Automotive Service Association (ASA). The fact that the issue of who could sit at the table was a difficult one requiring my decision, and was not the result of consensus, revealed much about the difficulties of the task ahead. Trust between the parties was not a readily available commodity.

Other individuals joined the facilitation at various points to bring expertise or other assistance to the process, and one or more observers from the Federal Trade Commission attended each formal session.

The group held 10 meetings from its initial session on August 3<sup>rd</sup> through its final meeting on September 30<sup>th</sup>. Each session lasted between four and six hours, with considerable preparation work by the parties between each session. CBBB provided formal progress reports to the Federal Trade Commission in letters on September 1<sup>st</sup>, September 14<sup>th</sup> and October 3<sup>rd</sup>.

In any facilitation or mediation, the parties trust in the impartiality of the neutrals – and the attendant confidentiality of the process – plays a vital role in the ultimate success or failure of the facilitation. I am therefore constrained as to the level of detail I believe I can share with you this morning. I will, however, endeavor to provide the Sub-Committee with a flavor of the major issues with which the parties were grappling.

As you undoubtedly know, the parties were not able to reach agreement on the full scope of a self-regulatory program. I should note, however, that this was not for want of trying on the part of all the participants. I believe that each party – and their respective experts – approached this facilitation in good faith. Their comportment throughout the process only enhanced my opinion of their commitment.

In point of fact, the parties rather quickly reached agreement on the need for – and basic nature of – a third-party dispute resolution process, which was my initial understanding of the purpose of the

facilitation. However, the parties all appeared to recognize that a third-party dispute resolution process by itself would not provide an adequate solution unless improvement was made in the two steps that would necessarily precede a formal third party process. Nearly all the work of the group was focused on either the first step (how the manufacturers respond to initial requests for assistance from repair facilities) or the second step (an expedited “fact-finding” which, it was decided, would be conducted by a restructured and better-funded process through the National Automotive Service Task Force – NASTF). I am convinced that a third-party dispute resolution process can work and can be agreed to by the parties once the issues relating to these first two steps are resolved.

As my October 3<sup>rd</sup> letter to the Federal Trade Commission indicated, the process ultimately was not able to reach resolution of the following issues:

- How should NASTF be restructured and governed to ensure that all interests were represented in a balanced manner;
- How tool-related issues should be handled, both by NASTF and by the third-party mechanism (had an agreement been reached, it was the parties’ intention to defer these questions to the newly-restructured NASTF board, raising the stakes for the governance issue just mentioned);
- How or whether possible issues of the cost of a tool would be handled by NASTF and the third-party if it were to be alleged that the price of the tool was so high in relation to the rest of the market that the price made the tool “unavailable” as a practical matter;
- A mutually acceptable method to deal with issues relating to vehicle security (how to provide the aftermarket industry with the practical ability to obtain necessary information and codes to complete repairs without compromising the consumer’s security). It seems that

only one or a few of the auto manufacturers were unable to reach agreement on a methodology);

- The extent to which manufacturer supplied information through telephone hotlines should be required to be made available to independent repair facilities when it is not published in writing and sent routinely to all franchised dealers, although it is made available to dealers on an as needed basis; and
- Should there be monetary remedies in the third party dispute resolution process, and if so, how should they be calculated, and what penalty, if any, should be assessed if a manufacturer failed to comply with a mechanism decision.

On behalf of the Better Business Bureau system, I want to thank the Committee for your attention and for your understanding that industry self-regulation can occupy an important place in the 21<sup>st</sup> century marketplace and that informal dispute resolution processes can very effectively compliment the legislative process.

I am available to answer any questions you may have.